YUSUF BUSRAH A

v.

PP

HIGH COURT SABAH & SARAWAK, KUCHING B
DAVID WONG DAK WAH JC
[CRIMINAL APPEAL NOS: 41-37-2005 I, 41-41-2005 II,
41-44-2005 II, 41-43-2005 I, 41-42-2005 III,
41-36-2005 III, 41-38-2005 II, 41-40-2005 I]
27 MARCH 2006 C

CRIMINAL PROCEDURE: *Sentence - Appeal against - Plea of guilty - Whether a mitigating factor - Considerations of factors - Whether correct and relevant - Whether magistrates applied correct law when meting out sentences - Whether sentences imposed manifestly excessive* D

CRIMINAL PROCEDURE: *Sentence - Concurrent or consecutive - Exercise of court's discretion - Facts and circumstances of each case - Whether there was reason to disturb sentences - Whether appeals dismissed - Whether sentences imposed by magistrates confirmed* E

There were eight separate appeals. On an application by the prosecution to deal with all the appeals together, this court agreed to do so in view of the fact that they involved the same appellant with substantially similar offences and for convenience, all the appeals were ordered to be heard together. The charges against F the appellant were that he had committed a few robberies and had impersonated as a police officer while committing all these crimes. He was brought before several magistrates on different occasions and in total was sentenced to 27 years. During the hearing of the appeal, the appellant was complaining about the G fact that the sentences were ordered to run consecutively. He requested the sentences to run concurrently with the sentence in CA 41-37-05 where the magistrate imposed a five year imprisonment sentence. The issues that arose were (1) whether or not the sentences imposed were manifestly excessive; and (2) H whether or not the sentences passed should run concurrently with the first case (commencing from 6 October 2005).

Held (dismissing appellant's appeals and confirming the sentences imposed by magistrates): I

(1) The first case was an offence under s. 392 of the Penal Code which carries a maximum sentence of fourteen years

A imprisonment and whipping. The magistrate had taken into account relevant considerations and could not be faulted. The appellant had had previous convictions and had not learned from past mistakes. These factors dictated that the appellant's plea of guilt need not be taken into consideration in
B sentencing *(Bachik Abdul Rahman v. PP)*. (paras 10 & 11)

(2) In the second case, the same magistrate in the first case relied on the same factors and sentenced the appellant to four years which starts to run from the completion of his first sentence
C in the first case. The magistrate refused to have the sentence run concurrently with the sentence in the first case as it would defeat the purpose of the sentence in the second case and in any event as both cases involved different transactions, the law prescribed a consecutive sentence. Again, this court
D could not fault the reasoning of the magistrate as he applied the correct principles of law. (para 12)

(3) In the third, fourth and fifth cases, another magistrate heard them all and hence she gave one judgment for the three cases.
E After setting out all the facts of the case, the magistrate then referred to the public interest factor and rejected the plea of guilt by the appellant as a mitigating factor and relied correctly on *PP v. Low Kok Wai*. The magistrate here had applied the totality principle as set out in the case of *Bachik Abdul Rahman*
F *v. PP* and ordered that the sentence of five years to run concurrently with the fourth and fifth case. Hence the appellant had benefited a period of five years from her decision. Here the magistrate applied the relevant considerations in coming to her decision and hence there was no reason for this
G court to change her sentences. (paras 13 & 17)

(4) As for the sixth case, another magistrate heard it and set out four factors which were (a) the plea of guilty by the appellant was not a mitigating factor as the appellant has had a history of several past convictions and was a habitual offender; (b)
H the rampancy of the offence itself in Sarawak and in this particular case it happened at a place the general public used as a recreation area; (c) the accused's previous convictions or bad record which also involved robberies and housebreaking and that the appellant also had two other cases before the
I court and (d) deterrence as a factor. These considerations were the correct and relevant ones and there was no reason to disturb the sentence. (paras 18 & 19)

(5) As for the seventh and eighth case, the same magistrate for the sixth case heard them and in sentencing relied on the same factors as he used in the sixth case. For the sentence imposed in the eighth case, he ordered the same to run concurrently with the sixth and seventh case. Again the appellant had benefited by that decision and there was no reason to disturb the sentence. Based on the foregoing reasons, the sentences meted out by the magistrates were not manisfestly excessive. (para 20)

(6) The appellant's history was not one which evoked sympathy from this court. He was a habitual offender and was not one who could repent. He undertook before this court that should he be found to commit another offence he would not ask for any mercy. This undertaking was part of his plea for leniency which could not be taken seriously as he had his chances before all the present cases to repent after his previous convictions. He only stayed clean so to speak for four years and then this litany of offences. Apart from the present eight offences, there was still one pending before the magistrate court. If the total sentence of twenty seven years crushed this man, then so be it. (para 24)

(7) Public interests demand that this court showed no sympathy to the appellant. To aggravate the matter he had impersonated as a policeman to commit all his crimes. This showed his utter contempt to the law. He had not shown any good reasons why this court should accede to his request and deviate from the general rule in *PP v. Yap Huat Seng.* (para 24)

Case(s) referred to:
Bachik Abdul Rahman v. PP [2004] 2 CLJ 572 CA ***(refd)***
Mohamed Abdullah Ang Swee Kang v. PP [1987] 2 CLJ 405; [1987] CLJ (Rep) 209 SC ***(refd)***
New Tuck Shen v. PP [1982] 1 MLJ 27 ***(refd)***
PP v. Loo Choon Fatt [1976] 2 MLJ 256 ***(refd)***
PP v. Low Kok Wai [1988] 2 CLJ 105; [1988] 2 CLJ 268 HC ***(refd)***
PP v. Yap Huat Seng [1985] 2 MLJ 414 ***(refd)***
Teh Ah Cheng [1976] 2 MLJ 187 ***(refd)***

Legislation referred to:
Penal Code, s. 392

Appellant in person
For the respondent - Syarifuddin Hj Abdul Rasa DPP

Reported by Suhainah Wahiduddin

A

JUDGMENT

David Wong Dak Wah JC:

[1] On 7 February 2006 when I sat I had eight separate appeals and one cross appeal from the prosecution before me and on an application by the prosecution to deal with all the appeals together, I agreed to do so in view of the fact that they involved the same appellant with substantially similar offences and for convenience, I ordered that all the appeals be heard together. Also on an application by the prosecution to withdraw their cross appeal in the eighth case, I struck out the cross appeal.

[2] After hearing the submissions from the appellant and the learned DPP, I dismissed the appeals of the appellant. In so doing I indicated briefly that the learned magistrates in meting out their sentences had applied the correct law. Further I took into consideration of the history of the appellant and held the view that these are not cases which I sitting as the appellate court should intervene. In concluding my ex-tempore ruling I stated that I would give my reasons in the event of further appeal. As there is now an appeal by the appellant, these are my reasons.

[3] The charges against the appellant were as follows:

(i) First Case: Criminal Appeal 41-37-05 (M-83-410-2005-E)

1st Charge

That you, on 6 September 2005, at about 8.01pm at MASJA Complex, Petra Jaya, Kuching, in the state of Sarawak, committed robbery of one unit hand phone brand Nokia model 3315 valued at Ringgit Malaysia one hundred and fifty (RM150) which was property of Margaret Ak Ahian (F) then in her possession and you thereby committed an offence punishable under s. 392 of the Penal Code.

2nd Charge

That you, on 6 September 2005, at about 8.01pm at MASJA Complex, Petra Jaya, Kuching, in the state of Sarawak, committed robbery of one unit had phone brand NOKIA model 8210 valued at Ringgit Malaysia one hundred and sixty (RM160) which was property of Bohari Bin Bujang (M) then in his possession and you thereby committed an offence punishable under s. 392 of the Penal Code.

(ii) Second Case: Criminal Appeal 41-41-05 (M-83-401-2005-D/E)

That you, on 5 May 2005, at about 5.30pm at an open area at Dewan Undangan Negeri Complex, Petra Jaya, Kuching, in the state of Sarawak, committed extortion by intentionally putting one Mohd. Anwar Bin Jahaya (M) in fear of certain injury, to wit, threatening to injure him with a handcuff and thereby dishonestly induced him to deliver a certain property, to wit, one (1) unit hand phone brand Nokia valued at Ringgit Malaysia one thousand (RM1,000) and you thereby committed an offence punishable under s. 384 of the Penal Code.

(iii) Third case: Criminal Appeal 41-44-05 (M-83-405-2005-D/B)

That you, on 8 September 2005, at about 2.15pm at MASJA Complex, Petra Jaya, Kuching, in the state of Sarawak, committed extortion by intentionally putting one Ainaa Maya Munira bte Ismail (F) in fear of certain injury, to wit, threatening to injure her with a handcuff and thereby dishonestly induced her to deliver a certain property, to wit the following:

(i) one (1) unit Nokia hand phone Model 6670

(ii) cash money RM300

to the total value to Ringgit Malaysia one thousand (RM1000) and you thereby committed an offence punishable under s. 384 of the Penal Code.

(iv) Fourth Case: Criminal appeal 41-43-05(M-83-403-2005-B)

1st Charge

That you, on 16 August 2005, at about 10pm at a spot along Jalan Bukit Siol, Petra Jaya, Kuching, in the state of Sarawak, committed robbery of one unit hand phone brand NOKIA 8250 valued at Ringgit Malaysia three hundred (RM300) which was property of Allens Fernandez Ak Charles (M) then in his possession and you thereby committed an offence punishable under s. 392 of the Penal Code.

2nd Charge

That you, on 16 August, 2005, at about 10.01pm at a spot along Jalan Bukit Siol , Petra Jaya, Kuching, in the state of Sarawak, committed robbery of one unit had phone brand Samsung X430 valued at Ringgit Malaysia two hundred (RM200) which was property of Nor Hazwani bte Sulaiman (F) then in her possession and you thereby committed an offence punishable under s. 392 of the Penal Code.

(v) Fifth Case: Criminal Appeal 41-42-05 (M-83-407-2005-B)

That you, on 3 September 2005, at about 9pm at the Parking Space, Dewan Undangan Negeri Complex, Petra Jaya, Kuching, in the state of Sarawak, committed robbery on Mohammad Nadzri bin Drahman(M) to wit:

(i) one unit hand phone brand Motorola

(ii) cash money RM20

to the total value to Ringgit Malaysia three hundred and Ninety (RM390) and at the time committing the said robbery you had caused injury to him by slapping him and you had thereby committed an offence under s. 392 of the Penal Code.

(vi) Sixth Case: Criminal appeal 41-36-05 (M-83-404-2005-C)

That you, on 8 September 2005, at about 2.15pm at MASJA Complex, Petra Jaya, Kuching, in the state of Sarawak, committed robbery of one unit hand phone brand Samsung valued at Ringgit Malaysia seven hundred (RM700) which was property of Awang Zakaria Bin Awang Sulaiman (M) then in his possession and you thereby committed an offence punishable under s. 392 of the Penal Code.

(vii) Seventh Case: Criminal Appeal (41-38-05)M-83-409-2005-D/C

That you, on 8 September 2005, at about 1.25pm at Taman Kolam Bintang, Petra Jaya, Kuching, in the state of Sarawak, committed extortion by intentionally putting one Hanafi bin Morhtar (M) in fear of certain injury, to wit, threatening to injure him with a handcuff and thereby dishonestly induced him to deliver a certain property, to wit the following:

(i) one (1) unit Nokia handphone Model 3200

(ii) one (1) unit Nokia handphone Model 3315

to the total value to Ringgit Malaysia eight hundred (RM800) and you thereby committed an offence punishable under s. 384 of the Penal Code.

(viii) Eighth case: Criminal Appeal 41-40-05 (M-83-408-2005-D/C)

That you, on 4 September 2005, at about 2pm at a spot in front of the State Library, Petra Jaya, Kuching, in the state of Sarawak, committed criminal intimidation by threatening Tan Chin Mei (F) with intent to cause alarm to the said Tan Chin Mei (F) to wit, by uttering the words "I will sell your nude photo", and you thereby committed an offence punishable under s. 506 of the Penal Code.

The brief facts as admitted by the appellant in respect of each case are as follows:

(i) First Case: Criminal Appeal 41-37-05 (M-83-410-2005-E)

The appellant impersonating as a policeman on 6 September 2005 at about 8pm approached one Margaret Ak Ahian (F) and Bohari Bujang and requested to check their identity cards. He then informed them that they had committed an offence by being together. The appellant then took the hand phones from the two victims with a demand of RM100 for the return of the hand phones and also threatened to report the alleged offence to the appropriate authority. The victims were frightened and asked for forgiveness and help to settle the matter. The appellant then directed her and her boyfriend to stay and wait while he looked for his friend. He never returned. The items taken, namely two units of Nokia hand phone, were worth around RM310.

(ii) Second Case: Criminal Appeal 41-41-05 (M-83-401-2005-D/E)

The appellant had on 5 May 2005, at about 1700 hours, approached one Mohd. Anwar Bin Jahaya (M) aged 19, a student at Politeknik, Matang and Aiziz Hakim (M), at Crown Square Jln. Pending Kuching, using a black Yamaha Sport motorcycle and then introduced himself as a policeman by

showing a handcuff to the victims. He then began to conduct a body search on them. He also took their identity cards and told them that he was taking them to the police station. The victims were then brought to an area at Dewan Undangan Negeri Complex, Petra Jaya, Kuching where the appellant took Mohd. Anwar Bin Jahaya's hand phone (Nokia) and gave the victims back their identity cards. Thereafter he sped off on his motorcycle.

(iii) Third case: Criminal Appeal 41-44-05 (M-83-405-2005-D/B)

On 19 August 2005 at about 1.30pm, Ainaa Maya Munira bte Ismail (F), 20 years old, a student at Politeknik Matang, and her friend Mohd. Alwi bin Adenan, aged 20, also a student at Politeknik Matang, Kuching while sitting in a car at MASJA Complex, Petra Jaya, Kuching, were approached by the appellant who was using a motorcycle and introduced himself as a policeman from Cawangan Maksiat IPK (S) Kuching by showing his handcuff. The appellant threatened to take them to the police station for an alleged offense. In return for not arresting them, the appellant then asked how much can they afford. Ainaa told him she had only RM300 in her BBC account, while his friend had RM400. The appellant then forced the victims to go to BBC Cawangan MASJA, Petra Jaya, Kuching using their car where she withdrew RM300 from her account. The appellant then took all the money and a hand phone (NOKIA 6670) worth about RM1,000.

(iv) Fourth Case: Criminal appeal 41-43-05(M-83-403-2005-B)

The appellant on 16 August 2005 at 9.30pm near the Sarawak Golf Club stopped one Allens Fernandez Ak Charles (M) and 3 of his friends one of which is Nor Hazwani bte Sulaiman (F) as they were on their way from Semariang towards Petra Jaya in a Proton Wira, Registration No. QKT 3365. He introduced himself as a policeman and showed them a pair of handcuffs aggressively. The appellant then asked for the victims' identity cards. Thereafter he asked one of the victims to come out from the car so that he could sit in the car and forced Allens to drive his car to Jalan Bukit Siol where the appellant said that a police van is waiting there. The appellant asked one of the victims to use his motor cycle and follow them. As they arrived at Jalan Bukit Siol, Petra Jaya, Kuching at about 10-10.01pm the appellant demanded money

from the victims but they refused. The appellant became aggressive with the victims and then snatched Allens' hand phone (Nokia 8250) and Nor's hand phone, (Samsung X430). Thereafter the appellant drove off on his motorcycle (Model Yamaha Lagenda Registration No. QKB 2890).

(v) Fifth Case: Criminal Appeal 41-42-05 (M-83-407-2005-B)

The appellant on 3 September 2005 at about 9pm approached one Mohammad Nadzri bin Drahman (M) and his girlfriend at the Parking Space, Dewan Undangan Negeri Complex, Petra Jaya, Kuching and introduced himself as a policeman. The appellant threatened to take the victims to the police station at Gita for using a stolen motorcycle. Mohammad pleaded with the appellant not to take them to the police station. Then the appellant snatched his Motorola hand phone and then took RM20 from Mohammad's wallet and further slapped Mohammad's face twice.

(vi) Sixth Case: Criminal appeal 41-36-05 (M-83-404-2005-C)

The appellant on 8 September 2005 at about 2.15pm at MASJA Complex, Petra Jaya, Kuching approached one Awang Zakaria bin Awang Sulaiman (M), student of SM Teknik Kuching and his friend by the name of Artila Laila bt. Yusof, by introducing himself as a policeman named 'Abdul Malek' by showing them a handcuff. The appellant then told the victims that they had committed an offence and will be reported to the school. In exchange for his promise not to report to the school he requested the victims' handphones. The appellant slapped Awang's face when he was reluctant to hand over the hand phone. The appellant then took the hand phones (Samsung and Nokia) from the victims and then droved off from the scene using his black motorcycle.

(vii) Seventh Case: Criminal Appeal (41-38-05)M-83-409-2005-D/C

One Hanafi bin Morhtar (M), a 19 year old student from Kolej Chermai Jaya Kuching, and his friend by the name Nadera Shafine (F) on 8 September 2005 while at Kolam Bintang, Petra Jaya, Kuching around 13.35pm were approached by the appellant impersonating himself as a policeman by showing a handcuff to both of them. The appellant then took Hanafi's hand phone (Nokia 3200) and Nadera's hand phone (Nokia

3315) and told them they can have the hand phones back for RM200. Appellant then drove off on his motorbike. After the incident, the appellant continued to phone Hanafi to request for money and on 10 September 2005 requested for RM5,000.

(viii) Eighth case: Criminal Appeal 41-40-05 (M-83-408-2005-D/C)

Tan Chin Nei (F) a 16 year old student from SMK Kuching High, together with her sister, Tan Swee Ling while sitting near a spot in front of the State Library, Petra Jaya, Kuching on 4 September 2005, at about 2pm were approached by the appellant who introduced himself as a policeman by showing a handcuff. The appellant then requested them to surrender their identity cards to him and informed them that the area is installed with CCTV and photographs had been taken of them urinating behind the tree in that area. The appellant threatened to sell the photograph and requested for RM100 from Nei who refused to give the money. However fortunately the victims managed to escape when two people happened to pass by that area.

Upon the appellant's own plea of guilty, he was convicted and sentenced by the respective courts as follows:

(i) First Case: Criminal Appeal 41-37-05 (M-83-410-2005-E)

Appellant on 6 October 2005 was sentenced to five (5) years imprisonment and three (3) strokes of rotan for both charges.

(ii) Second Case: Criminal Appeal 41-41-05 (M-83-401-2005-D/E)

Appellant on 7 October 2005 was sentenced to four (4) years imprisonment effective from the expiry of sentence in the first case.

(iii) Third case: Criminal Appeal 41-44-05 (M-83-405-2005-D/B)

Appellant on 7 October 2005 was sentenced to four (4) years imprisonment and fine of RM2,000 in default two (2) months imprisonment. The imprisonment sentence shall take effect at the end of sentence served in case M-83-401-05-D/E (appellant is now serving the sentence)

(iv) Fourth Case: Criminal Appeal 41-43-05(M-83-403-2005-B)

Appellant on 7 October 2005 was sentenced to five (5) years imprisonment and two (2) strokes of whipping for each charge. The sentence is to run concurrently but consecutively with case No. M-83-405-05-D/B (appellant is now serving the sentence).

(v) Fifth Case: Criminal Appeal 41-42-05 (M-83-407-2005-B)

Appellant on 7 October 2005 was sentenced to five (5) years imprisonment and fine of RM1,000 in default one (1) month imprisonment. The imprisonment sentence to run concurrently with sentence in case M-83-403-05-D/B (appellant is now serving the sentence)

(vi) Sixth Case: Criminal appeal 41-36-05 (M83-404-2005-C)

Appellant on 12 October 2005 was sentenced to five (5) years imprisonment and a fine of RM1,000 in default one (1) month imprisonment. The imprisonment sentence is to run after the appellant had served the imprisonment sentence of M-83-407-2005-B.

(vii) Seventh Case: Criminal Appeal (41-38-05)M83-409-2005-D/C

Appellant on 12 October 2005 was sentenced to four (4) years imprisonment and fine of RM2,000 in default two (2) months imprisonment. The imprisonment sentence is to run consecutively with the sentence of M-83-404-2005-C.

(viii) Eighth case: Criminal Appeal 41-40-05 (M-408-2005-D/C)

Appellant 12 October 2005 was sentenced to one (1) year imprisonment. The sentence is to run concurrently with the sentence in case No. M-83-404-2005-C and M-83-409-2005-D/C.

[4] So in total the appellant has been sentenced to 27 years. With the one-third remission, he will be serving 18 years. During the hearing of the appeal, I asked the appellant whether or not he was appealing against the severity of the sentences or that the fact that the sentences were ordered to run consecutively. He confirmed that he was in fact complaining about the fact that the

A sentences were ordered to run consecutively. He requested the sentences to run concurrently with the sentence in CA 41-37-05 where the magistrate imposed a five year imprisonment sentence. Despite his confirmation I will also in this judgment consider whether or not the sentences handed out are manifestly excessive.

B

[5] So the issues before me are these:

1. Whether or not the sentences imposed are manifestly excessive, such that I should revise them?

C 2. Whether or not the sentences passed should run concurrently with the First case (commencing from 6 October 2005) as requested by the appellant?

[6] The appellant's plea is that he is now 37 years old and if D he serves the 27 years sentence he will be 54 years old when he is released. This, he submits, will destroy his life. Further he says he is remorseful of what he had done and now wishes to turn over a new leaf. He further undertakes to the court that if he ever commits another offence, he will seek no mercy from the E courts.

[7] The learned DPP in opposing the appellant's request for concurrent sentences submitted that the appellant is a habitual offender which makes his claim of remorse as very doubtful, and in view of the rampancy of this sort of offence in the State, public F interest demands that the sentences handed down by the magistrates should not be disturbed. The appellant had also in all the offences impersonated as a police officer. Further if the sentences are to run concurrently as suggested by the appellant, it would mean that he would be only serving five years and G escape total punishment for the other seven crimes he had committed.

[8] I shall now deal with the first issue. It is trite law that the appellate court will only interfere if it is shown that the lower H court had acted on wrong principles in coming to its decision ie, by taking into consideration irrelevant matters or the sentence is manifestly excessive or illegal. Further it is an established practice that the appellate court will not alter a sentence merely because it might pass a different sentence. See *Public Prosecutor v. Loo* I *Choon Fatt* [1976] 2 MLJ 256; *New Tuck Shen v. Public Prosecutor* [1982] 1 MLJ 27).

[9] In dealing with these appeals, I am of course bound by the principles expounded by Mohamed Azmi SCJ in the case of *Mohamed Abdullah Ang Swee Kang v. Public Prosecutor* [1987] 2 CLJ 405; [1987] CLJ (Rep) 209 and I quote:

> In assessing the length of custodial sentence, the court must look at the overall picture in perspective by considering, firstly, the gravity of the type of offence committed; secondly, the facts in the commission of the offence; thirdly, the presence or absence of mitigating factors, and, fourthly, the sentences that have been imposed in the past for similar offences to determine the trend of sentencing policy, if any. The fact that a sentence of imprisonment is imposed as deterrence does not justify the sentencer in passing a sentence of greater length than what the facts of the offence warrant ...
>
> A sentencer must give sufficient discount for all extenuating circumstances pertaining to the degree of culpability or criminality involved, which must necessarily vary from case to case apart from other mitigating factors. Unless there is a proper reason for withholding such credits, failure to do so may result in the sentencer not exercising his or her discretion judicially in assessing the level of custodial sentence.

[10] In the first case which concerns an offence under 392 of the Penal Code which carries a maximum sentence of fourteen years imprisonment and whipping. In passing his sentence, the learned magistrate said this:

> In passing sentence, I have to carefully look into the behavior, character and also the nature of the offence itself. By looking at record of conviction, I cannot help myself from coming to a conclusion that the accused is indeed a habitual offender.
>
> Worst still a hard core one. He was sentenced by the court four times before this. The last was for a term of 5 years with 3 strokes of rottan. By looking at the date of release and the date he was charged before the court, it seems to suggest that he apparently did not learn his lesson. It was with total regret that I now observe the futility of those sentences in so far as deterrence or rehabilitation was concerned. There was an urgent need to protect from the public from the likes of this accused. Public interest therefore bubbled to the top in my deliberations on the issue of sentencing.

[11] In my view the learned magistrate took into account relevant considerations and cannot be faulted. The appellant had previous convictions and had not learned from past mistakes. These factors dictate that the appellant's plea of guilt need not be taken into consideration in sentencing (see *Bachik Abdul Rahman v. PP* [2004] 2 CLJ 572).

[12] In the second case, the same magistrate in the first case relied on the same factors and sentenced the appellant to four years which shall start to run from the completion of his sentence in the first case. The learned magistrate refused to have the sentence run concurrently with the sentence in the first case as in his view it would defeat the purpose of the sentence in the second case and in any event as both cases involve different transactions, the law prescribes a consecutive sentence. Again I cannot fault the reasoning of the learned magistrate as he applied the correct principles of law.

[13] In the third, fourth and fifth cases, another magistrate heard them all and hence she gave one judgment for the three cases. After setting out all the facts of the cases, the learned magistrate then referred to relevant case law on sentencing and applied them in coming to her decision. She first referred to the public interest factor in which she quoted the learned judgment of Abdoolcader J (as he then was) in the case of *Teh Ah Cheng* [1976] 2 MLJ 187, where he said:

> in sentencing generally the public interest must necessarily be one of the prime considerations ... public interest should never be relegated to the background and must of necessity assume the foremost importance.

[14] Then she rejected the plea of guilt by the appellant as a mitigating factor relying correctly on the case of *PP v. Low Kok Wai* [1988] 2 CLJ 105; [1988] 2 CLJ (Rep) 268, where his Lordship Mohamed Dzaiddin J (as he then was) said:

> it is a principle of sentencing that whenever possible the Court should take into account as a mitigating factor the fact that the Accused has pleaded guilty. The extent to which a plea of guilt is a mitigating factor must depend on the facts of each case, and it cannot be a powerful mitigating factor when effectively no defence to the charge was available to the Accused.

[15] Then she set out the reasons why the appellant's plea should not be a mitigating factor. This is what she said:

The Accused had also an antecedent criminal evidenced by exhibit P1 in all 3 cases. In the year 1992 and 1995, the Accused was convicted of robbery and was sentenced to 4 years jail and 2 strokes of rattan and 3 years jail respectively. In the year 2001 he was sentenced to imprisonment of 5 years and 3 strokes of rattan for an offence of theft. Aside from the 3 cases before me, the Accused at the same time is also facing 5 other charges in the other courts; 2 of which are charges under s. 384 of the Penal Code, 2 charges under s. 392 of the Penal Code and 1 charge under s. 506 of the Penal Code.

[16] Finally on the issue whether or not the sentences should run consecutively or concurrently she said this:

While a long sentence is necessary to protect the public and also considering that the Accused is a recidivist, the totality principle must not be overlooked. Here, the total sentence of 14 years and 4 strokes of rattan can be considered to be 'crushing' taking into account the statutory maximum of 14 years under s 392 of the Penal Code. Having said that and reviewing my sentence again as a whole in the light of the totality principle, I ordered the sentence of imprisonment in the 3rd case to run concurrently with the 1st and 2nd case.

[17] The learned magistrate here had applied the totality principle as set out in the case of *Bachik Abdul Rahman v. PP* [2004] 2 CLJ 572 and ordered that the sentence of 5 years to run concurrently with the fourth and fifth case. Hence the appellant had benefited a period of five years from her decision. Here the learned magistrate applied the relevant considerations in coming to her decision and hence there is no reason for me to change her sentences.

[18] As for the sixth case, another magistrate heard it and there he set out four factors and they were:

1. The plea of guilty by the appellant is not a mitigating factor as the appellant has a history of several past convictions and is a habitual offender.

2. The rampancy of the offence itself in Sarawak and in this particular case it happened at a place where the general public uses it as a recreation area.

A 3. The accused's previous convictions or bad record which also involved robberies and housebreaking. Also the fact that the appellant also had 2 other cases before the court;

i) M-83-409-2005-D/C – Extortion case;

B ii) M-83-408-2005-C – Criminal Intimidation under s. 506 Penal Code.

4. Deterrence as a factor.

C **[19]** Those considerations are the correct and relevant ones and I see no reason to disturb the sentence of the learned magistrate.

[20] As for the seventh case and eighth case, the same learned magistrate for the sixth case heard them and in sentencing, relied on the same factors as he used in the sixth case. For the D sentence imposed in the eighth case, he ordered the same to run concurrently with the sixth and seventh case. Again the appellant had benefited by that decision. Again I see no reason to disturb the sentence of the learned magistrate.

E **[21]** Based on the foregoing reasons, I hold that the sentences meted out by the learned magistrates are not manifestly excessive.

[22] I come now to the second issue. The law on whether or not sentences should run concurrently or consecutively is firmly F established by Shaikh Daud J in *PP v. Yap Huat Seng* [1985] 2 MLJ 414 where he stated that sentences should be concurrent if the offences involved one transaction. But where two or distinct offences had been committed, sentences of imprisonment should run consecutively. As pointed out earlier the learned magistrates G had not deviated from the aforesaid principle.

[23] The issue which confronts me is that because of the consecutive nature of the sentences handed down, whether or not the total of 27 years of imprisonment term would have such H crushing effect on the appellant such that this court should interfere with the nature of the sentences handed down. This concerns the totality principle which is explained by the learned author in *Principles of Sentencing* 2nd edn at pp. 57-58 (referred to in *Bachik Abdul Rahman v. PP* [2004] 2 CLJ 572) where he states I as follows:

The many decisions of the court in which the totality principle has been applied to explain the reduction of a cumulative sentence made up of correctly calculated individual parts suggest that the principle has two limbs. A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences involved, or if its effect is to impose on the offender 'a crushing sentence' not in keeping with his record and prospects.

[24] To determine this issue, I look at the history of the appellant's criminal records. With respect, the appellant's history is not one which evokes sympathy from this court. As pointed out by the learned magistrates, he is a habitual offender and is not one who can repent. He undertook before me that should he be found to commit another offence he will not ask for any mercy from the court. This undertaking was part of his plea for leniency. This undertaking cannot be taken seriously by this court as he had his chances before all the present cases to repent after his previous convictions. He only stayed clean so to speak for four years and then this litany of offences. Apart from the present eight offences, there is still one pending before the magistrate court. As stated in my ex tempore short judgment, if the total sentence of twenty seven years crushes this man, then so be it. The public interests demand that I show no sympathy to the appellant. To aggravate the matter he had impersonated as a policeman to commit all his crimes. This shows his utter contempt to the law. Finally he had not shown me any good reasons why I should accede to his request and deviate from the general rule as stated by Shaikh Daud J in *PP v. Yap Huat Seng (supra)*.

[25] For reasons given above, I dismiss the appeals by the appellant and confirm the sentences imposed by the learned magistrates.